

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 17-134
for Fiscal Year 2017	)	

**COMMENTS OF NCTA- THE INTERNET AND TELEVISION ASSOCIATION**

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NCTA- The Internet & Television Association (“NCTA”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding,<sup>1/</sup> to address specifically the assessment and collection of regulatory fees for Direct Broadcast Satellite (“DBS”) services for Fiscal Year (“FY”) 2017.

**INTRODUCTION AND SUMMARY**

The Commission has rightly recognized that “DBS providers impose regulatory costs and receive benefit from the activities of the Media Bureau FTEs that affect all MVPDs”<sup>2/</sup> and that “the DBS and cable television/IPTV oversight and regulatory work of Media Bureau FTEs is similar.”<sup>3/</sup> Yet, despite its commitment “to regulatory fee parity for all MVPDs paying into the

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<sup>1/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, MD Docket No. 17-134, FCC 17-62 (rel. May 23, 2017) (“*NPRM*”).

<sup>2/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd. 10339, ¶ 26 (2016) (“*FY 2016 Order*”); *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 10268, ¶ 20 (2015) (“*FY 2015 Order*”) (“When adopting the new regulatory fee subcategory for DBS within the cable and IPTV category, we determined a variety of regulatory developments have increased the amount of regulatory activity by the Media Bureau FTEs involving regulation and oversight of MVPDs, including DBS providers.”).

<sup>3/</sup> *FY 2016 Order*, ¶ 30.

cable television/IPTV fee category,”<sup>4/</sup> the Commission last year set the FY 2016 fee for DBS at only 27 cents per subscriber, a rate the Commission acknowledges was “significantly below parity with the cable television/IPTV rate.”<sup>5/</sup>

Unfortunately, in the *NPRM* for FY 2017, the Commission again proposes a DBS fee insufficient to achieve appropriate regulatory parity. The *NPRM* includes only a minimal increase for annual DBS regulatory fees, suggesting a rate of 36 cents per subscriber per year, plus two cents due to the increase in the Commission’s budget for moving expenses, while proposing to require cable television and IPTV operators to pay over twice that amount.<sup>6/</sup>

There is no justification for this disproportionately low DBS rate. *First*, DBS operators impose regulatory costs and receive benefits from the activities of the Media Bureau that affect all MVPDs, yet the Commission’s proposed fees leave an unfair share of the Media Bureau regulatory fees to be borne by cable operators and IPTV providers. *Second*, the proposed regulatory fees impose competitive and technological disparities, favoring DBS operators over the cable and IPTV operators with whom they compete for customers and violating the fundamental principle that similar services should be regulated similarly. *Third*, DBS operators have provided no legitimate reasons for why they should continue to pay significantly lower regulatory fees than cable and IPTV providers. DBS operators make extensive use of Media Bureau resources, and they have now been on notice for several years that they will be subject to Media Bureau regulatory fees – fees that have been phased in unusually slowly. Claims of “rate shock” over a few pennies are belied by DBS operators’ repeated decisions to raise fees for their

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<sup>4/</sup> *FY 2016 Order*, ¶ 30.

<sup>5/</sup> *NPRM*, ¶ 18.

<sup>6/</sup> *See NPRM*, Appendix B (proposing an annual regulatory fee of \$0.96 per subscriber for cable television and IPTV operators).

service by many dollars. More fundamentally, equitable distribution of regulatory fees would benefit MVPD consumers as a whole, as cable and IPTV consumers currently bear an unfairly large burden of regulatory costs.

NCTA urges the Commission to ensure competitive and technological neutrality by raising the fees assessed DBS operators to a level equal with those assessed on cable/IPTV providers, so that all entities in this category pay their fair share to support Media Bureau activities regulating MVPD services.

**I. THE RATE PAID BY DBS OPERATORS TO SUPPORT THE MEDIA BUREAU SHOULD BE THE SAME AS THE RATE PAID BY CABLE AND IPTV PROVIDERS**

The Commission should adopt a fee structure reflecting parity among all providers in the cable/IPTV/DBS category, regardless of the technology used to deliver their services. The Commission's proposed fees are not proportionate to the costs incurred by the Media Bureau from, and the benefits of its activities to, DBS operators, and impose competitive disparities. The *NPRM* proposes to charge DBS operators a per-subscriber fee of 38 cents for MVPD regulation, a fraction of the per-subscriber fee of \$0.96 that it would require cable operators to pay,<sup>7/</sup> despite the Commission's previous conclusions that DBS operators use Media Bureau resources regularly and to a similar extent. There is no basis for allowing DBS operators to pay less than half of the fee proposed for other entities in the cable/IPTV/DBS category.

**A. DBS Operators Regularly Use Media Bureau Resources.**

As Commission precedent makes clear, it is well established that DBS operators impose substantial costs on, and receive the benefits of, the Commission's Media Bureau through their

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<sup>7/</sup> See *NPRM*, Appendix B.

involvement in various regulatory and other proceedings.<sup>8/</sup> In setting the FY 2016 regulatory fee for DBS, for example, the Commission found that “DBS, along with other MVPDs, continues to receive increased oversight and regulation as a result of the work of Media Bureau FTEs” and that “DBS providers impose regulatory costs and receive benefit from the activities of the Media Bureau FTEs that affect all MVPDs.”<sup>9/</sup> In the *NPRM*, the Commission continues to hold this view, recognizing that “the Media Bureau FTEs increasingly devote time to issues involving the entire MVPD industry, and that DBS, cable television, and IPTV all receive oversight and regulation as a result of the work of the Media Bureau FTEs on MVPD issues.”<sup>10/</sup>

A quick review of current Media Bureau dockets confirms the above, demonstrating a tremendous level of DBS provider participation: DBS operators have submitted filings in numerous Media Bureau dockets, including, for example, the ATSC 3.0 proceeding, which DISH Network and AT&T/ DIRECTV are participating in heavily through the American Television Alliance, the second most prolific filer after the National Association of Broadcasters.<sup>11/</sup> Individually, excluding merger proceedings, between January 2011 and May 2017, DISH had at least 30 meetings or phone calls with 40 different members of the Media Bureau staff regarding 19 different proceedings and AT&T /DIRECTV had at least 30 meetings or phone calls with 33 different staff members regarding 16 different proceedings.<sup>12/</sup> Again

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<sup>8/</sup> See, e.g., *FY 2016 Order*, ¶¶ 26, 30; *FY 2015 Order*, ¶ 20.

<sup>9/</sup> *FY 2016 Order*, ¶ 26.

<sup>10/</sup> *NPRM*, ¶ 16.

<sup>11/</sup> See FCC Electronic Comment Filing System, Filings for *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, available at [https://www.fcc.gov/ecfs/search/filings?q=\(proceedings.name:\(\(16-142\\*\)\)%20OR%20proceedings.description:\(\(16-142\\*\)\)\)&sort=date\\_disseminated,DESC](https://www.fcc.gov/ecfs/search/filings?q=(proceedings.name:((16-142*))%20OR%20proceedings.description:((16-142*)))&sort=date_disseminated,DESC) (last visited June 8, 2017).

<sup>12/</sup> Notably, these numbers account only for those meetings for which DIRECTV or DISH were listed as the filers for the notices of *ex parte*, or in which they participated through the American

excluding merger proceedings, DISH and DIRECTV averaged 7.5 filings in Media Bureau dockets in 2015 and 24 filings in Media Bureau dockets in 2016; in contrast, the 4 largest cable/IPTV operators (excluding AT&T) averaged 5.5 filings in Media Bureau dockets in 2015 and 22 filings in Media Bureau dockets in 2016. In sum, DBS operators are just as, if not more, active in Media Bureau proceedings than the largest cable/IPTV providers and far more active than most cable operators.

Despite DBS operators' clear and substantial involvement in Media Bureau activities, the Commission proposes only a marginal increase to DBS fees that leaves cable/IPTV providers and their customers responsible for an unjustifiably large share of the Media Bureau regulatory fees. The Commission should remedy this imbalance and impose on DBS operators a regulatory fee that reflects the burden that DBS operators have continued to place on Media Bureau time and resources.

**B. The Proposed Fees For DBS Operators Unfairly Favor Them Over Competing Cable And IPTV Providers And Violate The Fundamental Principle That Similar Services Should Be Regulated Similarly.**

Regulatory fees should be evenly distributed among MVPDs, regardless of the technology they use, to keep fees fair and to preserve competitive neutrality. As NCTA has previously explained, one of the foundational tenets of the Commission's regulatory fee assessment system is fairness – the principle that those entities that share in causing regulatory costs and receiving regulatory benefits from a Commission subdivision like the Media Bureau should share equitably in paying the fees that support the Bureau.<sup>13/</sup> The Commission has

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Television Alliance. DIRECTV and DISH have also participated in many meetings with Media Bureau staff through coalitions such as the Coalition for Competitive Access to Content.

<sup>13/</sup> See Comments of the National Cable & Telecommunications Association and American Cable Association, MD Docket No. 14-92, at 5 (filed Nov. 26, 2014) (citing *Procedures for Collection and Assessment of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd. 8458, ¶ 3 (2012)); Comments of the National Cable & Telecommunications Association and American Cable Association,

reaffirmed and underscored its commitment to this principle of fairness in regulatory fee assessments over the years, including when the Commission began assessing IPTV providers the same per-subscriber regulatory fee as cable operators for support of the Media Bureau’s regulation of MVPD operations.<sup>14/</sup> The Commission reasoned that “IPTV and cable service providers [both] benefit from Media Bureau regulation as MVPDs,” and that they should pay for that regulation at the same rate because there is a “relatively small difference from a regulatory perspective” between the two types of MVPDs.<sup>15/</sup> Similarly, DBS operators benefit from the activities of the Media Bureau, and the regulatory differences between DBS operators and cable operators/IPTV providers do not warrant differences in fees.

A necessary corollary to the principle of fairness is the concept of competitive parity, regardless of the technology used to deliver service – an understanding that no regulated entity should be advantaged or disadvantaged in the assessment of regulatory fees *vis-a-vis* its direct competitors.<sup>16/</sup> The Commission’s substantially disparate proposed fee for DBS, however, would place cable operators at a competitive disadvantage to satellite. As detailed above, DBS operators benefit from the regulatory services of the Media Bureau; if they pay a disproportionately small fee for those services, that disparity requires their direct competitors to make up the difference. In today’s highly competitive MVPD market – in which DBS operators

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MD Docket No. 15-121, at 2 (filed June 22, 2015) (“NCTA/ACA 2015 Comments”); *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd. 5354, ¶ 6 (2015) (“FY 2015 NPRM”) (noting that the Commission “continues to improve the regulatory fee process by ensuring a more equitable distribution of the regulatory fee burden”).

<sup>14/</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd. 12351, ¶¶ 10-12 (2013).

<sup>15/</sup> See *id.*, ¶ 32 & n.81.

<sup>16/</sup> See *id.*



are counted among the five largest MVPDs<sup>17/</sup> – continuing to force cable operators to pay significantly higher fees than DBS operators is unjustified. And ultimately, it is cable and IPTV subscribers who are forced to subsidize DBS operators, when this fee is passed through, in whole or in part, to subscribers.

Assessing DBS operators a lesser fee for similar use of the Media Bureau unfairly disadvantages cable operators on the basis of the technology they use to provide their services. As NCTA has explained before, this system puts the Commission in the position of promoting satellite-delivered services, while discouraging use and expansion of cable and IPTV services.<sup>18/</sup> Such an outcome is neither warranted nor appropriate. To maintain competitive and technological neutrality, the Commission should assess regulatory fees on DBS operators on the same basis that it assesses those fees on cable operators and IPTV providers.

## **II. DBS OPERATORS HAVE NO LEGITIMATE ARGUMENTS AGAINST REGULATORY FEE PARITY BETWEEN DBS AND CABLE/IPTV**

### **A. It Is Unnecessary For The Commission To Demonstrate Absolute Regulatory Parity Between DBS, Cable, And IPTV Before Assessing Comparable Media Bureau Regulatory Fees On DBS Operators.**

The Commission has broad discretion to adjust the regulatory fees based on “factors that the Commission determines are necessary in the public interest.”<sup>19/</sup> As detailed above, DBS operators are just as, if not more, active in Media Bureau proceedings than cable/IPTV providers. However, even if DBS operators interacted with the Media Bureau slightly less often because DBS operators, cable operators and IPTV providers are not regulated identically, such differences would still not warrant differences in fees. The Commission has never held that each

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<sup>17/</sup> *Top 25 MVPDs*, MULTICHANNEL NEWS (Feb. 27, 2017), <http://www.multichannel.com/top-25-mvpds/411157>.

<sup>18/</sup> See NCTA/ACA 2015 Comments.

<sup>19/</sup> 47 U.S.C. § 159(b)(3); see also, *FY 2015 NPRM*, ¶ 31.

entity should pay fees *exactly* equal to its interaction with the Media Bureau or any other bureau—nor is it required by the statute to do so.<sup>20/</sup> To the contrary, the Commission has consistently grouped similar services into broad categories for purposes of assessing regulatory fees, even though some providers in those categories may make greater or lesser use of Bureau resources.<sup>21/</sup> The Commission has rightly recognized that any attempt to particularize regulatory fee assessments to the specific year-to-year or entity-to-entity use that may be made of the Commission’s resources would be extremely and unnecessarily complicated.<sup>22/</sup> For instance, it would be nearly impossible to evaluate when a Media Bureau FTE working on ATSC 3.0 issues is doing so for “cable” or “DBS” purposes. This frequent functional overlap would make it both difficult and unproductive to attempt to assess on an FTE-by-FTE basis how many Media Bureau FTEs are devoted to DBS issues as opposed to other MVPD issues, as would be necessary for a separate DBS fee category to properly function.

### **B. DBS Operators Have Had Ample Time To Prepare For Regulatory Fee Adjustments.**

In previous years, DBS operators have consistently opposed paying their fair share of regulatory fees, claiming that appropriate increases in their fees would subject customers to “rate

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<sup>20/</sup> See *NPRM* at n.54 (noting that “[t]he agency is not required to calculate its costs with ‘scientific precision’” and that “[r]easonable approximations will suffice”); *FY 2015 NPRM*, ¶ 33 (“We also reject the argument raised by DIRECTV and DISH that section 9 of the Act requires us to ‘show that DBS and cable occupy a comparable number of FTEs.’”).

<sup>21/</sup> See, e.g., *FY 2015 NPRM*, ¶ 33 (“Other fee categories, such as Interstate Telecommunications Service Providers (ITSP), also include a range of carriers that may not be regulated identically. For example, when interconnected Voice over Internet Protocol (VoIP) providers were added to the ITSP category in a permitted amendment the Commission observed that ‘the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service and CMRS.’”).

<sup>22/</sup> See *id.* (“The commenters’ argument that DBS is not involved in certain matters such as petitions for effective competition, or other requirements that do not pertain to DBS, demonstrates that DBS is not identical to cable television. . . . [A]lthough DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues. The burden imposed on the Commission is therefore similar.”).

shock” and inject uncertainty into the regulatory fee process<sup>23/</sup> despite the Commission’s efforts to appease DBS operators’ concerns by implementing a phase-in approach.

These arguments are unconvincing. As noted above, the Commission has phased in rate increases for DBS unusually slowly – setting it first at 12 cents for FY 2015, and then raising it to 27 cents in FY 2016. Both years, the Commission made clear that it would update the rate in the years to come to ensure an appropriate level of regulatory parity.<sup>24/</sup> DBS operators have now had ample time to prepare for a fee adjustment requiring them to pay their fair share, and such an increase cannot reasonably be claimed to be unexpected.

Arguments about harm to customers are similarly unpersuasive. Whatever increase in the cost of DBS service that may occur as a result of equitable sharing of support for Media Bureau regulation will be offset by the benefit to cable and IPTV consumers who currently bear an unfairly large share of the burden of these costs. This outcome is consistent with the Commission’s goal to promote fairness in the regulatory fee assessment system by “ensuring a more equitable distribution of the regulatory fee burden among categories of Commission licensees” under Section 9 of the Communications Act.<sup>25/</sup> Moreover, bringing DBS regulatory fees into parity with those paid by cable and IPTV providers would result in a fee increase of only pennies per year per DBS subscriber. In contrast, DBS operators have raised their

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<sup>23/</sup> See, e.g., Comments of DISH Network L.L.C., MD Docket No. 16-166, at 6-8 (filed June 20, 2016); Comments of AT&T, MD Docket No. 16-166, at 1-2 (filed June 20, 2016).

<sup>24/</sup> See *FY 2015 Order*, ¶ 21 (“[W]e will update this rate for future years, based on relevant information, as necessary for ensuring an appropriate level of regulatory parity and considering the resources dedicated to this new regulatory fee subcategory”); *FY 2016 Order*, ¶ 30 (“[W]e remain committed as a goal to regulatory fee parity for all MVPDs paying into the cable television/IPTV fee category.”).

<sup>25/</sup> See *FY 2015 NPRM*, ¶ 5; see also 47 U.S.C. § 159.

subscriber rates significantly, increasing them by multiple dollars last year and again this year.<sup>26/</sup>

They cannot now seriously argue that they are concerned about the impact of a few additional pennies on subscriber rates.

## CONCLUSION

NCTA appreciates the Commission's yearly regulatory fee analysis and the opportunity to comment on the fair assessment of regulatory fees. Consistent with the Commission's conclusions regarding Media Bureau regulatory work and DBS, the Commission should revise its regulatory fee schedule to assess DBS operators an equal share of Media Bureau regulatory fees.

Respectfully submitted,

/s/

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<sup>26/</sup> DIRECTV in particular also raised fees for its regional sports networks up to an additional \$2.56 a month in select markets and will be raising the price of its NFL Sunday Ticket package by 9.3% next season. See *Fierce Cable*, "DirecTV to raise NFL Sunday Ticket prices 9.3% next season," (Feb. 7, 2017); *Fierce Cable*, "DIRECTV sets another January across-the-board price increase," (Dec. 5, 2016) (reporting DIRECTV's announcement that it will raise rates for eight of its nine packages by \$2-\$6 per month in 2017, after already raising rates \$2-\$8 last year); *Fierce Cable*, "DISH follows U-verse and DIRECTV, announces rate increases for 2016," (Dec. 18, 2015) ("Dish is increasing the monthly price of its tiers by a factor ranging from \$2 to \$8 a month.").